

FAIR EMPLOYMENT & HOUSING COMMISSION

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**MINUTES
467th COMMISSION MEETING**

March 27, 2007
Ronald Reagan State Building
300 South Spring Street, Auditorium
Los Angeles, California

PRESENT:

Chairman George Woolverton, Commissioners Linda Ng, Patrick Adams, Tamiza Hockenhull and Carol Freeman; and Commission staff Ann Noel, Caroline Hunt, Joseph Ragazzo and Loc D. Tra; Senior Assistant Attorney General Louis Verdugo Jr.; and Attorney General staff Michael Newman, Angela Sierra, Antoinette Cordero and Satoshi Yanai; Department of Fair Employment and Housing (Department or DFEH) Director Suzanne Ambrose; and members of the public

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to call the meeting to order at 10:00 a.m. [07-05]

OPEN SESSION

REVIEW OF THE MINUTES

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to adopt the Minutes and Transactions of the 466th meeting as submitted. [07-06]

REVIEW OF AGENDA

The Commission accepted the agenda.

COMMISSIONERS' REPORTS

Executive and Legal Affairs Secretary Ann Noel congratulated Commissioner Ng on her new employment as Safe Water Chief with the California Department of Water Resources (DWR).

Commissioner Ng reported that she's managing DWR's Safe Drinking Water Office to ensure that California water districts have enough funds to provide safe drinking water for all Californians.

EXECUTIVE AND LEGAL AFFAIRS SECRETARY'S (ELAS) ACTIVITY REPORT

ELAS Noel discussed the following items from the ELAS Activity Report:

New Administrative Law Judges (ALJ): ELAS Noel introduced new ALJ Joe Ragazzo to the Commissioners. Ragazzo came to the Commission from the Consumer Fraud Unit of the Attorney's General Office. He received a master's degree in Public Policy from Harvard University and is currently the Commission's Legislation Committee liaison. As of this meeting, new ALJs Ragazzo and Brown had resided over one and two hearings, respectively.

2007-08 Budget: State and Consumer Services Agency recommended and the Department of Finance approved a \$20,000 augmentation for the 2007-08 FEHC budget for Commission travel expenses and pay. Noel stated that the Commission is very appreciative of Secretary Rosario Marin's ardent advocacy on the Commission's behalf to obtain this augmentation.

Adjudication and Settlement Conferences: For the calendar year 2006, the Department issued 78 accusations. In the calendar year 2006, the Commission ALJs presided in 35 days of contested hearings, conducted 33 telephonic case management conferences, conducted 10 settlement conferences and mediations, and handled 11 law and motion matters. In January and February 2007, the ALJs presided in 8 days of contested hearings, conducted 7 case management conferences, conducted 3 settlement conferences, and handled 2 law and motion matters. In March 2007, the ALJs have presided or are scheduled to preside in 8 days of contested hearings and two case management conferences.

Upcoming Commission Meetings for 2007: The Commission set tentative dates for FEHC meetings in 2007: April 23 (telephonic), May 14 – San Francisco, August 7 – San Diego, September 18 – Eureka, November 5 – San Francisco and December 4 – Modesto.

Administrative Law Judges Training: The Commission has invested in considerable training for its administrative law judges in the past four months.

Last fall, ALJs Ann Noel and Caroline Hunt took a National Judicial College (NJC) webinar training on ethics and bias for administrative law judges.

In November, Regina Brown attended a NJC course on Advanced Evidence.

In January, all FEHC ALJs attended a Bar Association of San Francisco training on mediation ethics.

In January and February, ALJs Ann Noel, Caroline Hunt and Regina Brown devised and conducted a 20 hour training program on administrative fair hearings for all of the Commission

ALJs. The Department of Personnel Administration approved the course as “NJC-equivalent.” In February and March, ALJs Brown and Ragazzo completed a 40-hour course on mediation.

Retreat: On March 6, 2007, ELAS Noel and the ALJs held an offsite “retreat” to discuss administrative issues and staff and Commission planning for the upcoming months.

Outreach and Public Speaking: ELAS Noel reported that , on behalf of the Commission, she has spoken or will speak numerous times to the public or lawyer groups about FEHA or the Commission’s sexual harassment training regulations: January 27, 2007 (California Judges’ Association-The Rutter Group), February 27, 2007 and March 13, 2007 (ELT), April 10 and May 9, 2007 (Brightline Compliance), and April 14 and 28 and May 5, 2007 (CEB).

Appointments: Commission staff congratulated DFEH Director Suzanne Ambrose’s recent appointment as Executive Officer to the State Personnel Board (SPB), beginning May 1, 2007.

DEPARTMENT’S REPORT

Executive Director Suzanne Ambrose gave the Department of Fair Employment and Housing report. Ambrose told the Commission that she has accepted an appointment by the State Personnel Board to serve as its Executive Officer, beginning May 1, 2007.

Ambrose summarized what she has been able to accomplish with the DFEH in the last three years. These accomplishments include:

- Improving and automating DFEH’s call center. The unit is now fully staffed, wait times are now down to 37 seconds (from two hours!), wait times are monitored constantly, and supervisors can monitor calls.
- Training for all investigative staff, partnering with EEOC, including special training for new investigators, and DFEH system-wide training for all investigators, to be completed by June.
- Rewriting and updating the DFEH’s Case Analysis Manual, which had not been updated for years.
- Reinstating a mediation program, using volunteer attorneys, for early resolution of DFEH complaints.
- Augmenting DFEH’s budget to hire 11 new investigators, expand the IT unit, update hardware and software, institute online scheduling and an online right-to-sue process (to be in place by September).
- Opening another district office in Los Angeles, and utilizing loaned space and retired annuitants in San Bernardino and San Francisco to create satellite offices.
- Planning to increase the geographical diversity of DFEH offices in the next fiscal

year, splitting up the three Los Angeles offices and moving these offices to more diverse geographical locations, such as Pomona, Long Beach or north of downtown Los Angeles.

- AB 1825 sexual harassment training seminars for employers and partnering with SPB to provide training through them to all state supervisors.
- The Commission thanked Ambrose for her report and her stellar accomplishments as DFEH Director, congratulated her on her new SPB appointment, and wished her well in her new position.

ATTORNEY GENERAL'S REPORT

Senior Assistant Attorney General Louis Verdugo Jr. introduced Civil Rights Enforcement Section's (CRES) Los Angeles legal staff: Angela Sierra, Michael Newman and the CRES's newest hire, Deputy Attorney General Satoshi Yanai, a former DFEH attorney. Verdugo also told the Commission that CRES had hired Antoinette Cordero as a new Deputy Attorney General (DAG).

Verdugo along with Supervising Attorney General Angela Sierra reported and discussed the work of the Civil Rights Enforcement section of the Attorney General's office.

Verdugo discussed *State of California v. United States of America*, a suit challenging the federal Weldon Amendment, which would place abortion-related spending restrictions on \$49 billion dollars of federal spending in California on health and education. The federal government recently filed a Motion for Summary Judgment in that case.

Thereafter, Supervising Attorney General Angela Sierra reported about the progress of the following cases:

- *United States Chamber of Commerce v. Lockyer*, a lawsuit challenging AB 1829, a 2001 state law which prohibits employers who receive state funds from deterring union organizing. CRES is awaiting word whether the United States Supreme Court will grant certiorari in this case.
- *Wallace v. City of San Diego*, a suit challenging the city's preferential lease to the Boy Scouts. CRES filed an amicus brief in this case supporting plaintiffs.
- *Dept. Fair Empl. & Hous. v. M.D.G.* an age case where the DFEH alleges that a nightclub fired a waitress because it deemed her no longer attractive. The Court of Appeal just affirmed the trial court's denial of the defendant's Motion to Strike the Complaint.
- *Dept. Fair Empl. & Hous. v. 1105 Elta Road Apts.*, a housing discrimination failure to accommodate case. The defense filed a Motion to Strike, which the trial court denied. The defense is appealing this ruling in the Court of Appeal.
- *Dept. Fair Empl. & Hous. v. 25th Century*, a gender and pregnancy employment case. The jury awarded a verdict for DFEH of \$27,000 which the employer is appealing.

The Commission thanked Verdugo for his report.

50th ANNIVERSARY PLANNING

ELAS Noel discussed with the Commission its plans for the 50th Anniversary Celebration of the enactment of (FEHA) and other long range planning. The Commission created the following plan of action for the next two years to accomplish the set goals.

Goal #1: Commemorate Civil Rights in California by Celebrating FEHA Fiftieth Anniversary

A. Financing

ELAS Noel reported that the Commission, as a state adjudicatory agency, cannot solicit or accept funds for the 50th anniversary. Rather, it needs to work with co-sponsors who can fulfill this role.

B. Possible Co-sponsors for Funding and Events

ELAS Noel stated that FEHC staff has approached two organizations as possible co-sponsors for 50th anniversary events. The first, the Labor and Employment Section of the State Bar (L&E), would be a logical partner for a conference focusing on civil rights law to be held in April 2009. Tony Skogen, the outgoing Chair of the L&E section, and Phyllis Cheng, an outgoing member of the L&E board and a former FEH Commissioner, addressed the Commission regarding an L&E-Commission partnership. Both Skogen and Cheng were enthusiastic about the L&E working together with the Commission to plan the April 2007 conference on the 50th anniversary theme. Skogen suggested that Noel contact and work with Karen Clopton, the incoming Chair of the L&E section on this issue. Cheng suggested that the L&E section devote one issue of the L&E Journal to the 50th anniversary and also make its annual law student writing contest on 50th anniversary issues. The Commission agreed to work with the L&E on this conference.

ELAS Noel also talked about working with the California African American Museum (CAAM), a state-run museum, located in Exposition Park, Los Angeles. Like the Commission, CAAM is under the umbrella of the State and Consumer Services Agency. CAAM has a non-profit arm which may solicit and collect funds for exhibitions. CAAM's Executive Director, Charmayne Jefferson, is interested in CAAM partnering with the Commission on commemorating the historical record of civil rights in California in the past 50 years.

CAAM has the staff to put together a historical exhibition and events celebrating FEHA's 50th anniversary. The Commission has some historical material for the exhibit which CAAM would supplement with other archival material of civil rights struggles and victories throughout the state. The Commission agreed to work with CAAM to create an historical exhibition on the development of civil rights in California in the last 50 years. Staff proposes to have the opening for this exhibit on the actual 50th anniversary date for the signing of the Fair Employment and Housing Act, September 18, 2009.

Finally, ELAS Noel discussed and the Commission agreed to host a celebratory event at the State Capitol Rotunda, to be held April 17, 2009.

C. Planning Committee

ELAS Noel suggested and the Commission agreed to establish a planning committee to work on 50th anniversary planning. The Commission agreed to suggest nominees to be part of this planning committee, forwarding names to FEHC staff by **April 13, 2007**. Thereafter, the Commission would discuss the nominees and create the planning committee at its May 14, 2007 Commission meeting. Because of limited funds, these meetings would primarily be conducted telephonically, the first meeting to be held June 4, 2007 from 10 to noon.

Chairman Woolverton suggested that Commissioner Tamiza Hockenhull lead the Commission's 50th anniversary planning. Hockenhull agreed to chair this work.

Goal #2: Research and Develop a Legislative Agenda for 2008-2009

On behalf of FEHC staff, ELAS Noel proposed, and the Commission agreed, that the Commission's legislative committee spend time in the next six months to develop a proposed legislative agenda for the next legislative session for 2008-09. Commissioners Patrick Adams and Linda Ng will form the Commission's legislative committee, with ALJ Ragazzo staffing the committee. Chairman Woolverton stressed that the committee should work with the administration on any legislative proposals it develops.

LEGISLATION

ALJ Ragazzo reported and summarized the relevant bills introduced in the 2007 legislative session which would amend FEHA, change or modify other civil rights laws, of interest to the Commission.

AB 14 - (Assembly Member (ASM.) Laird) (Discrimination Civil Rights Act of 2007)

AB 43 (ASM Leno) (Gender Neutral Marriage)

SB 11 (Senator (Sen.) Migden) Domestic Partnership)

SB 777 (Sen. Kuehl) (Discrimination)

AB 537 (ASM Swanson) (Family and Medical Leave)

SB 727 (Sen. Kuehl) (Unemployment and Disability Compensation Benefits: Family Temporary Disability Insurance: Grandparents, Grandchildren, and Siblings)

SB 836 (Sen. Kuehl) (Fair Employment: Familial Status)

SB 122 (Sen. Steinberg) (Hate Crimes: Homelessness)

SB 198 (Sen. Battin) (Age Discrimination: Homeless Youth)

AB 147 (ASM Wolk) (Discrimination: Persons with Disabilities)

SB 874 (Sen. Calderon) (Public Accommodations: Access)

AB 1708 (Introduced by the Committee on Labor and Employment) (Age Discrimination)

AB 976 (ASM Calderon) (Housing Discrimination re: Citizenship and Immigration Status)

AB 295 (ASM Lieu) (State Agency Collection of Demographic Data)

SB 26 (Sen. Simitian) (State Agencies: Collection of Data: Ancestry or Ethnic Origin)

ACR 1 (ASM Levine) (California Holocaust Memorial Week)

AB 1501 (ASM Niello) (Sexual Harassment Education)

AB 1197 (ASM Aghazarian) (Discrimination: Sex Offenders)

Ragazzo recommended that the Commission should continue to monitor all these bills as they move through the assigned committees with special attention to AB 537, AB 976, SB 122, SB 727 and SB 836.

HARASSMENT TRAINING REGULATIONS

Commissioner Freeman recused herself from any participation for this portion of the meeting concerning the Commission's harassment training regulations at 11:33 a.m.

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission voted 4:0 to adopt without further changes to its proposed revisions to the text of the February 27, 2007, version of its "Sexual Harassment Training and Education" proposed regulations. [07-07]

The public will now have from March 30, 2007 through April 16, 2007 to submit comments regarding the revised March 27, 2007 text. All comments will be reviewed and responded to by the Commission staff as part of the compilation of the rulemaking file. The Commission will consider the public comments for further modifications and adopt the regulations at its April 23, 2007, telephonic Commission meeting.

PUBLIC COMMENTS

Chairman Woolverton asked the members of the public present if anyone wished to speak. No one wished to speak.

The Commission took a ten minutes recess at 11:37 a.m.

CLOSED SESSION

Commissioner Freeman rejoined the meeting and the Commission reconvened and entered Closed Session at 11:51 a.m.

Only the Chairman, Commissioners, Commission staff and Attorney General staff were present.

The Commission discussed writs, hearings and litigation and deliberated on pending cases.

a. Writs and Appeals (ELAS Noel presented the following)

(1) DFEH v. San Francisco BART (Bartley)

The Superior Court will hear respondent's writ on June 22, 2007.

b. Post-Decision

ALJ Caroline Hunt discussed the status of FEHC cases post decision.

In *DFEH v. Peter Muna (Williams)*, the DFEH filed a proof of claim with the United States bankruptcy court for the Commission's judgment, contempt and attorney's fees.

In *DFEH v. Los Angeles Fire Department (Killian)*, *DFEH v. Fields (Langille)*, and *DFEH v. Ford of Simi Valley (Darby)*, the complainants have received their payments in full. In *DFEH v. Prunty's New Beginnings (Project Sentinel/Jensen)*, the complainant has received partial payment and the case has been referred to the Attorney General's office to obtain a judgment for the remaining unpaid civil penalty. The Department has thus far been unable to collect judgment in *DFEH v. CATERON, et al (Benjamin)* and *DFEH v. Capitol Hills AM/PM (Johnson)*.

c. Administrative Adjudication: Pending Decisions (ELAS Noel presented the following)

(1) DFEH v. San Diego City Event (Handevitd)

Commissioner Adams moved, Commissioner Ng seconded, and the Commission voted 5:0 to adopt the proposed decision, reduce the "emotional distress" damages to zero, and make the decision partially precedential on the issue of bankruptcy. [07-08]

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the

Commission unanimously voted to end Closed Session at 1:00 p.m. [07-09]

ADJOURNMENT

The Commission adjourned its meeting and the forum at 1:00 p.m.

Date: March 27, 2007

GEORGE WOOLVERTON
Chairman

ANN M. NOEL
Executive and Legal Affairs Secretary

**REPORT OF TRANSACTIONS
OF THE 467th COMMISSION MEETING**

March 27, 2007

**Ronald Reagan State Building
300 South Spring Street, Auditorium
Los Angeles, California**

THE COMMISSION AT THIS MEETING TOOK THE FOLLOWING ACTIONS:

- 07-05 Approved calling the meeting to order.
- 07-06 Approved the Minutes and Transactions of the 466th meeting as submitted.
- 07-07 Voted 4:0 to adopt the Commission's revision to its February 27, 2007, version of its "Sexual Harassment Training and Education" proposed regulations.
- 07-08 Voted 5:0 to adopt the proposed decision, reduce the "emotional distress" damages to zero, and make the decision partially precedential in DFEH v. San Diego City Event (Handevidt) on the issue of bankruptcy.
- 07-09 Approved ending Closed Session and adjourning the meeting.

Prepared By

Loc D. Tra
Clerk of the Commission